

courts addressing Federal requirements comparable to procurement requirements of this subpart.

(2) For the determination of Federal issues presented by the protest, the Regional Administrator may rely upon:

(i) Determinations of other protests decided under this section, unless such protests have been reversed; and

(ii) Decisions of the Comptroller General of the United States or of the Federal courts addressing Federal requirements comparable to procurement requirements of this subpart.

(3) The Regional Counsel may establish additional procedural requirements or deadlines for the submission of materials by parties or for the accomplishment of other procedures. Where time limitations are established by this section or by the Regional Counsel, participants must seek to accomplish the required action as promptly as possible in the interest of expediting the procurement action.

(4) A party who submits a document subsequent to initiation of a protest proceeding under paragraph (d) or (e) of this section must simultaneously furnish each other party with a copy of such document.

(5) The procedures established by this section are not intended to preclude informal resolution or voluntary withdrawal of protests. A complainant may withdraw its appeal at any time, and the protest proceeding shall thereupon be terminated.

(6) The Regional Administrator may utilize appropriate provisions of this section in the discharge of his responsibility to review grantee procurement under 40 CFR 35.935–2.

(7) A protest may be dismissed for failure to comply with procedural requirements of this section.

(g) *Burden of proof.* (1) In proceedings under paragraphs (d) and (e) of this section, if the grantee proposes to award a formally advertised, competitively bid, fixed price contract to a party who has submitted the apparent lowest price, the party initiating the protest will bear the burden of proof in the protest proceedings.

(2) In the proceedings under paragraph (e) of this section—

(i) If the grantee proposes to award a formally advertised, competitively bid,

fixed-price contract to a bidder other than the bidder which submitted the apparent lowest price, the grantee will bear the burden of proving that its determination concerning responsiveness is in accordance with this subchapter; and

(ii) If the basis for the grantee's determination is a finding of nonresponsibility, the grantee must establish and substantiate the basis for its determination and must adequately establish that such determination has been made in good faith (coverage) as is required by State or local law or the grantee or as is customary and appropriate. Under the Flood Disaster Protection Act of 1973, a contractor must purchase flood insurance to cover his risk of loss if the grantee has not purchased the insurance (see § 30.405–10 of this subchapter).

**§ 35.940 Determination of allowable costs.**

The grantee will be paid, upon request in accordance with § 35.945, for the Federal share of all necessary costs within the scope of the approved project and determined to be allowable in accordance with § 30.705 of this chapter, this subpart, and the grant agreement.

**§ 35.940–1 Allowable project costs.**

Allowable costs include:

(a) Costs of salaries, benefits, and expendable material the grantee incurs for the project, except as provided in § 35.940–2(g);

(b) Costs under construction contracts;

(c) Professional and consultant services;

(d) Facilities planning directly related to the treatment works;

(e) Sewer system evaluation (§ 35.927);

(f) Project feasibility and engineering reports;

(g) Costs required under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4621 *et seq.*, 4651 *et seq.*), and part 4 of this chapter;

(h) Costs of complying with the National Environmental Policy Act, including costs of public notices and hearings;